

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  Plaintiff,  v.  CESAR ARAMBULA, et al.,  Defendants.	NO. CR21-107 RSM  JOINT MOTION TO CONTINUE TRIAL DATES  Noting Date: August 20 <sup>th</sup> , 2021
UNITED STATES OF AMERICA,  Plaintiff,  v.  CRESENCIO MORENO AGUIRRE, et al.,  Defendants.	NO. CR21-108 RSM

1 UNITED STATES OF AMERICA,

2 Plaintiff,

3 v.

4 KENDLE RASHEN HAWKINS,  
5 EDWARD L. ABERCROMBIE, and  
6 HUMBERTO FLORES SERNA,

7 Defendants.  
8

NOS. CR21-5213 RSM  
CR21-117 RSM  
CR21-5251 RSM

9  
10 **I. INTRODUCTION**

11 The parties set forth below, by and through their respective attorneys of record,  
12 respectfully move this Court to continue the trial dates in these related cases to June 6,  
13 2022. The parties further move this Court to set a status conference for November 9,  
14 2021, at which time the Court should set a pretrial motions cutoff date as well as any  
15 appropriate scheduling order.

16 **II. BACKGROUND**

17 **A. The Investigation.<sup>1</sup>**

18 These cases arise from a 20-month investigation, led by the FBI, into drug  
19 trafficking and gun crimes in the region. Over the course of the investigation, FBI agents  
20 and their law enforcement partners arranged controlled buys of drugs from individuals,  
21 debriefed a number of informants, conducted hundreds of hours of surveillance, obtained  
22 and executed dozens of search warrants, tracking warrants, pen register and trap and trace  
23 orders, and other process. The government also obtained authorization four times to  
24 intercept a series of cell phones. The investigation culminated with the execution of  
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27 <sup>1</sup> The background facts are based on the government's allegations in these cases, and are provided solely to give the  
28 Court context for the motion to continue the trial date. The defendants do not, by joining this motion, agree that the  
government's allegations are true, and all of the defendants have entered pleas of not guilty.

Joint Motion to Continue Trial Date - 2

*U.S. v. Arambula, et al.*; *U.S. v. Moreno Aguirre, et al.*; *U.S. v. Hawkins*; *U.S. v. Abercrombie*; *U.S. v. Flores Serna*

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1 numerous search warrants on locations, vehicles, and persons over the last three and a  
2 half months.

3 **B. The Indictments.**

4 On March 31, 2021, a grand jury sitting in this District returned four related  
5 indictments charging 19 people with a variety of drug trafficking and firearm charges.  
6 Each of the four indictments—*United States v. Calvert-Majors, et al.*, CR21-053 RSM,  
7 *United States v. Lumumba-Olabisi, et al.*, CR21-056 RSM, *United States v. Snipes, et al.*,  
8 CR21-057 RSM, and *United States v. McGee, et al.*, CR21-058 RSM—explicitly  
9 referenced the other three indictments returned the same date as involving co-  
10 conspirators. While the evidence demonstrated that each of the nineteen defendants were  
11 part of the same conspiracy, for administrative reasons, the government presented  
12 separate indictments.

13 On the same day, law enforcement obtained more than 80 search warrants for  
14 locations, vehicles, and individuals involved in this investigation. The warrants were all  
15 executed on April 7, 2021. Most of the nineteen charged individuals were also arrested  
16 that day (two in other jurisdictions), and the remainder turned themselves in over the next  
17 few days. Additionally, based on evidence located during the execution of those warrants,  
18 law enforcement arrested five people—Ezell,<sup>2</sup> Clemente, Jordan, Evans, and Daniels—on  
19 probable cause, and complaints were filed against them the same day. A grand jury  
20 returned separate indictments against those five individuals on April 14, 2021. They were  
21 each charged in standalone indictments not because the conduct was separate from the  
22 conspiracy charged in the first four indictments—it was not—but because of time  
23 constraints in preparing for a grand jury presentation and the fact that not all of the  
24 reports from the search warrants had yet been received and reviewed. All of the 24  
25 defendants initially charged have had their Initial Appearance, and all have been  
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<sup>2</sup> Ezell also has a pending supervised release violation as a result of his arrest arising from this investigation.

Joint Motion to Continue Trial Date - 3

*U.S. v. Arambula, et al.*; *U.S. v. Moreno Aguirre, et al.*; *U.S. v. Hawkins*; *U.S. v. Abercrombie*; *U.S. v. Flores Serna*

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1 arraigned. The cases were all assigned to the Honorable Ricardo S. Martinez.<sup>3</sup> A  
 2 discovery coordinator has been appointed in all nine cases. The matters are currently set  
 3 for trial in June 2022.

4 On June 23, 2021, the government obtained another three indictments charging an  
 5 additional 13 individuals with drug and gun crimes related to this same conspiracy and  
 6 arising from the same investigation.

7 In particular, Hawkins was identified as a drug supplier associated with this  
 8 conspiracy based on confidential source reporting that identified him as a source of  
 9 supply for Kenneth Lee, charged as a co-conspirator in *United States v. Lumumba-*  
 10 *Olabisi et al.* He was arrested in possession of approximately 50,000 fentanyl pills and  
 11 five firearms and is charged in a stand-alone indictment.<sup>4</sup>

12 The other two indictments—*Arambula* and *Moreno Aguirre*—charge each of the  
 13 twelve defendants named therein with conspiracy, and explicitly reference the original  
 14 four indictments returned on March 31 and the other conspiracy indictment returned on  
 15 June 23 as involving co-conspirators. Again, while the evidence demonstrated that each  
 16 of the twelve newly charged defendants were part of the same conspiracy as each other  
 17 and as the original nineteen defendants, for administrative reasons, the government  
 18 presented separate indictments.

19 On June 28, 2021, the government obtained 48 search warrants authorizing the  
 20 search of locations, vehicles, and persons related to this investigation. These warrants  
 21 were simultaneously executed on June 30, 2021. Most of the twelve newly charged  
 22 defendants were arrested the same day; Hawkins was already in custody. Two defendants  
 23 remain at large. Additionally, based on evidence located during the execution of those  
 24  
 25

26 <sup>3</sup> The matters were initially all reassigned to the Honorable Richard A. Jones, as that Court had the case with the  
 27 earliest cause number. However, when Judge Jones recused himself, all matters were re-assigned to Judge Martinez,  
 who was the assigned judge on Ezell's prior case, which now also involves a related supervised release violation.

28 <sup>4</sup> Based on the location of Hawkins' arrest, this matter was initially assigned to Tacoma. It has since been re-  
 assigned to the Honorable Ricardo S. Martinez in Seattle.

warrants, law enforcement arrested two people—Abercrombie and Flores Serna<sup>5</sup>—on probable cause, and complaints were filed against them the same day. A grand jury returned separate indictments against those two individuals on July 14, 2021. Again, they were each charged in standalone indictments not because the conduct was separate from the conspiracy charged in any of the earlier indictments—it was not—but because of time constraints in preparing for a grand jury presentation and the fact that not all of the reports from the search warrants had yet been received and reviewed.

At this time, 13 of the 15 newly charged individuals have made their Initial Appearance in this Court and been arraigned. All of these defendants have counsel, whether appointed or retained. The other two—Jorge Aguilar Duran and Cresencio Moreno Aguirre—have not yet been arrested by law enforcement, despite attempts to locate them and effectuate those arrests.

### III. STATUS OF DISCOVERY

#### A. Discovery Provided to Date

With respect to the more recently charged group of fifteen individuals named in this motion, the government has already produced to all counsel—at the time of Initial Appearance or as soon thereafter as counsel was appointed—all of the core discovery relating to Title III interceptions. This includes the pleadings, intercepted sessions (audio, text message, and MMS/internet data) as well as the related linesheets. The government has also produced pertinent FBI and related reports; search warrants, tracking warrants, pen register/trap and trace orders, and similar process; photographs and evidence logs from search warrants executed prior to June 30, 2021; and the search warrant materials for the warrants executed on June 30, 2021. Individual discovery was also provided to each defendant, which includes both defendant-specific discovery (e.g., a defendant's criminal history) that were produced only to that defendant, and key documents pertinent

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<sup>5</sup> Based on the location of Flores Serna's arrest, this matter was initially assigned to Tacoma. It has since been re-assigned to the Honorable Ricardo S. Martinez in Seattle.

1 to that defendant (e.g., reports of surveillance or execution of a search warrant, pertinent  
2 linesheets) that were also provided to all defendants.

3 In total, the government already produced more than 16,000 pages of discovery to  
4 this set of defendants, not including individual discovery.

5 **B. Discovery to Be Produced.**

6 The government is currently working to produce a significant amount of discovery  
7 currently in its possession from the FBI. This discovery includes additional search  
8 warrants, surveillance photographs, pole camera video, PRTT and tracking data, the  
9 downloads from numerous phones and other digital devices, and similar material. The  
10 government is also in the process of obtaining and organizing additional material from  
11 the execution of the search warrants on June 30, 2021, including reports, recordings of  
12 statements, evidence logs, photographs, related warrants, and the download of many  
13 digital devices. This forthcoming discovery is likely larger in size than the volume of  
14 material already produced, as well as approximately eight terabytes of footage taken by  
15 pole cameras at multiple locations.

16 This Court has appointed Russ Aoki as a discovery coordinator in the earlier,  
17 related cases (*Calvert-Majors*, *Lumumba-Olabisi*, *Snipes*, *McGee*, *Ezell*, *Clemente*,  
18 *Jordan*, *Evans*, and *Daniels*) to assist those defendants in processing the large volume of  
19 data. The government anticipates that defendants will request a similar appointment in  
20 the above-captioned cases and, in the event Mr. Aoki is appointed, the government will  
21 work with him as necessary to make sure discovery is provided in an organized and  
22 accessible manner. Additionally, the government has circulated a draft agreed protective  
23 order to address sensitive materials that will be produced; so far, counsel for twelve of the  
24 defendants have expressed approval. The government anticipates filing an agreed motion  
25 for a protective order in the coming weeks.

#### IV. BASIS FOR CONTINUANCE AND AUTHORITY

##### A. Most Parties Agree That a Continuance Is Necessary.

On July 14, 2021, the government sent a letter to all counsel providing information about the discovery already provided, anticipated productions, and other discovery-related issues. The government also began a conversation with defense counsel about a realistic trial date for these related cases, suggesting that spring 2022 was probably reasonable in light of the volume of discovery, the number of defendants, and defense counsels' backlog of trials due to the pandemic and related courthouse closures. Since that time, the government has spoken with counsel for every one of the 13 defendants who have made an appearance on the charges against them, and there is broad agreement that a continuance is necessary in light of these considerations; further, nearly all attorneys agree that a continuance to June 2022 is an appropriate and realistic date. Moreover, the nine additional related cases are all scheduled for trial on June 6, 2022, and these matters should be set for the same date, as the government will likely move to join or seek a superseding indictment for any defendants who remain in the case at that time. Below is a list of all defense counsel who agree to a continuance and the defendant that the attorney represents; any caveat to their agreement to a continuance of this length is included in a footnote.

Counsel	Defendant
<i>United States v. Arambula, et al.</i>	
Arturo Menéndez <sup>6</sup>	Cesar Arambula
Cathy Gormley	Raul Barreto Bejines
<i>United States v. Moreno Aguirre, et al.</i>	
Karen Unger	Rafael Ramirez
Jennifer Horwitz & Fatima Dilek	Samuel Duarte Avila

<sup>6</sup> Arambula has filed a motion to substitute counsel, requesting that his CJA-appointed counsel, Kenneth Therrien, be replaced with retained counsel, Mr. Menéndez. This motion remains pending, but both counsel have indicated that they are in agreement with the proposed continuance.

Joint Motion to Continue Trial Date - 7

*U.S. v. Arambula, et al.*; *U.S. v. Moreno Aguirre, et al.*; *U.S. v. Hawkins*; *U.S. v. Abercrombie*; *U.S. v. Flores Serna*

1	Robert Goldsmith	Sergio Reyes-Pina
2	Emma Scanlan	Elyas Mohamed Kerow
3	Richard Smith	David William Armer
4	Gregory Lee Scott	Brett David Radcliff
5	Robert Flenbaugh	Herbert Dean Scott, Jr.
6	Laurence Tran	Viet Phi Nguyen
7	Single Defendant Cases	
8	Timothy Rusk <sup>7</sup>	Kendle Rashon Hawkins
9	Nicholas Andrews	Humberto Flores Serna

## 11 **B. Non-Agreeing Defendants**

12 One defendant, Edward L. Abercrombie, does not join the motion to continue.  
 13 Abercrombie is charged in a stand-alone indictment and detained pending resolution of  
 14 the charges against him, and he opposes any continuance whatsoever. Paula Olson, who  
 15 represents Abercrombie, has represented to the government that she needs additional time  
 16 to conduct an investigation into the allegations against her client and to prepare a defense,  
 17 is not joining the motion to continue.

## 18 **C. There Is Ample Legal Authority to Continue the Trial Date.**

### 19 1. *In a Case of This Size and Complexity, a Continuance Is Authorized.*

20 The Speedy Trial Act provides for a number of bases to continue a trial. Pursuant  
 21 to 18 U.S.C. §§ 3161(h)(7)(A), a trial may be continued, and the resulting delay excluded  
 22 from the calculation of time in which a trial is to be held, if the Court finds that the ends  
 23 of justice served by a continuance outweigh the best interest of the public and the  
 24 defendant in a speedy trial. Factors that a Court must consider in making this  
 25 determination include, but are not limited to: (1) whether failure to grant a continuance

26  
 27 <sup>7</sup> Mr. Rusk agrees that a continuance is appropriate, but requests that Hawkins' case be set for trial in early  
 28 December 2020, separate from the other indictments. Mr. Rusk's position is that the case against Hawkins is not as  
 complex as the other matters and, although it arises from the same investigation, it is a standalone indictment that is  
 not substantively related to the other indictments.



1 would make proceeding impossible, or result in a miscarriage of justice; (2) whether the  
 2 case is so unusual or complex that it is unreasonable to expect adequate preparation  
 3 within the time limits set by the Act; and (3) whether the failure to grant a continuance  
 4 would deny counsel for any party the reasonable time necessary for effective preparation.  
 5 18 U.S.C. § 3161(h)(7)(B)(i), (ii), (iv). These linked cases, considered together, constitute  
 6 an exceptionally large prosecution. The number of defendants, the interconnected  
 7 indictments, the extensive investigation, and the sheer volume of discovery make it  
 8 difficult to foresee this case being ready for trial sooner than a year after the arrests.

9 Accordingly, based on the foregoing facts, “(i) the failure to grant such a  
 10 continuance in the proceeding would be likely to make a continuation of such proceeding  
 11 impossible, or result in a miscarriage of justice,” because “(ii) . . . the case is so unusual  
 12 or so complex, due to the number of defendants, the nature of the prosecution, or the  
 13 existence of novel questions of fact or law, that it is unreasonable to expect adequate  
 14 preparation for pretrial proceedings or for the trial itself within the time limits established  
 15 by this section.” Even if the case was not “complex” within the meaning of subsection  
 16 (ii), a continuance would nonetheless be appropriate under subsection (iv), because “the  
 17 failure to grant such a continuance . . . would deny counsel for the defendant or the  
 18 attorney for the Government the reasonable time necessary for effective preparation,  
 19 taking into account the exercise of due diligence.”

20 2. *In a Multi-Defendant Case, the Court Can Overrule the Few*  
 21 *Objections to a Continuance.*

22 The parties who join this motion understand that some defendants have objected to  
 23 the continuance or to its proposed length. These objections can and should be overruled.  
 24 The Speedy Trial Act explicitly provides that, “when the defendant is joined for trial with  
 25 a codefendant as to whom the time for trial has not run and no motion for severance has  
 26 been granted,” the delay in bringing that defendant to trial is excluded from the time  
 27 period in which trial must be held. 18 U.S.C. § 3161(h)(6). Thus, in multi-defendant  
 28 cases, a reasonable trial continuance as to any defendant tolls the Speedy Trial Act period

as to all joined co-defendants, even those who object to a trial continuance or who refuse to submit a waiver under the Speedy Trial Act. Here, objecting defendants are joined in cases with other defendants who not only do not object to a continuance, but are actively seeking a continuance and agree that it is necessary under the circumstances. Thus, if the Court agrees that a continuance in the June 2022 timeframe is appropriate under the Speedy Trial Act—which is the position of the overwhelming majority of the attorneys involved in this matter, all of whom have extensive experience in criminal defense work—any objections to the requested continuance should be overruled.

**D. A Continuance Is Necessary.**

A significant continuance to a date certain, most appropriately to June 6, 2022, is both necessary and appropriate. These related cases are quite complex. All of these indictments arise out of a years-long investigation into the distribution of significant quantities of drugs over a lengthy period of time. The conspiracy involved extensive physical and electronic surveillance, court-authorized searches and interceptions, debriefing of numerous individuals, and other investigative techniques. To say the discovery is voluminous is an understatement. It includes data extracted from dozens of cellular devices, GPS and pen register/trap and trace data for dozens of cellular phones, numerous surveillance photographs, many hours of surveillance and pole camera videos, hundreds of photographs documenting the searches of over approximately 60 locations, and more than a thousand law enforcement reports. There is also a considerable volume of physical evidence seized during the many search warrants executed in this case. While tens of thousands of pages of discovery have already been provided, much of the discovery is still being organized and has yet to be produced. Once it is produced, the defense will need substantial additional time to review and analyze the evidence prior to filing of pretrial motions and preparation for trial.

In addition, as set forth above, the government anticipates superseding the indictments to add additional substantive counts, based in part on further analysis of the financial evidence (which is still being gathered) as well as evidence recovered during the

1 execution of the search warrants. The government also anticipates that the superseding  
2 indictment would join a number of defendants in the same case, or the government may  
3 simply move to join any cases still pending trial as the trial date approaches.

4 In this case, most of the defendants agree that a lengthy continuance is necessary  
5 to permit further trial preparation. The parties to this motion all stipulate and agree that  
6 the ends of justice served by a continuance outweigh the best interests of the public and  
7 each defendant in a more speedy trial. The failure to grant a continuance based upon the  
8 government's and defendants' need to prepare the matter for trial would result in a  
9 miscarriage of justice by denying the parties the reasonable time necessary for effective  
10 preparation for trial, taking into account the exercise of due diligence.

11 In addition, while not in itself a basis for the continuance, a trial date in June 2022  
12 will also give the parties an opportunity to attempt to resolve at least some of the charges  
13 short of trial. Indeed, many defendants have already begun such conversations.

14 The parties are well aware that it would be virtually impossible to try all 39  
15 defendants—or even a large fraction thereof—at the same time. Of course, as the Court  
16 well knows, the reality of federal criminal practice is that relatively few of these  
17 defendants will actually proceed to trial. Nonetheless, because of the possibility that  
18 many defendants may remain in the case as trial approaches, and because of the  
19 complexity of the case and the volume of discovery, the parties propose that the Court  
20 schedule a status conference for November 9, 2021, consistent with the status conference  
21 already set in the earlier, related cases. At this conference, the Court could both enter a  
22 case management order, setting forth deadlines for any remaining discovery to be  
23 produced and ordering a briefing schedule, and also address how to proceed with the  
24 number of defendants remaining in the case at that time.

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**V. CONCLUSION**

For the reasons set forth above, the parties to this motion jointly and respectfully ask this Court to continue trial in this matter to June 6, 2022, and to set a status conference on November 9, 2021. The defendants joining this motion will file speedy trial waivers to accommodate such a continuance.

DATED this 6th day of August, 2021.

Respectfully submitted,

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Approved via email:

***United States v. Arambula, et al.***  
***CR21-107 RSM***

/s/ Arturo Menéndez  
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Attorney for Cesar Arambula

/s/ Cathy Gormley  
CATHY GORMLEY  
Attorney for Raul Barreto Bejines

***United States v. Moreno Aguirre, et al.***  
***CR21-108 RSM***

/s/ Karen L. Unger  
KAREN L. UNGER

Attorney for Rafael Ramirez  
/s/ Fatima Dilek

1 FATIMA DILEK  
Attorney for Samuel Duarte Avila  
2 /s/ Robert W. Goldsmith  
3 ROBERT W. GOLDSMITH  
Attorney for Sergio Reyes-Pina  
4  
5 /s/ Emma Scanlan  
EMMA SCANLAN  
6 Attorney for Elyas Mohamed Kerow  
7  
8 /s/ Richard A. Smith  
RICHARD A. SMITH

Attorney for David William Armer  
/s/ Gregory Lee Scott  
GREGORY LEE SCOTT  
Attorney for Brett David Radcliff  
  
/s/ Robert Flenbaugh, II  
ROBERT FLENNAUGH, II  
Attorney for Herbert Dean Scott, Jr.  
  
/s/ Nadine Bertman  
NADINE BERTMAN  
Attorney for Viet Phi Nguyen

***United States v. Kendle Rashen Hawkins***  
**CR21-5213 RSM**

/s/ Timothy C. Rusk  
TIMOTHY C. RUSK  
Attorney for Kendle Rashen Hawkins

***United States v. Humberto Flores Serna***  
**CR21-5251 RSM**

/s/ Nicholas Ross Andrews  
NICHOLAS ROSS ANDREWS  
Attorney for Humberto Flores Serna

**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Lissette Duran  
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